

# VISIBILITY



Advocating Public Health Benefits and Environmental Performance

Summer Issue

## ENVIRONMENTAL PERFORMANCE STRATEGIES

### **CARB and EPA Certify Dust Suppressant Products**

Recently the California Air Resources Board (CARB) and the U.S. EPA certified a handful of dust suppression products. EPA and CARB each joined cooperatively with manufacturers to verify the performance claims for certain products. These efforts will allow individuals and businesses to invest in products that have been tested in actual outdoor conditions, producing data that is available for public review. In dry areas, like many western states, manufactured dust suppressants can help fugitive dust sources comply with PM10 regulations. All of the EPA and CARB certified dust suppressants show approximately an 85% reduction in emissions when used correctly.

EPA certified two products through its Environmental Technology Verification (ETV) Program: EK®35 and EnviroKleen®. Both products were tested over a three-month period at Fort Leonard Wood, Missouri, an U.S. Army base. The test site there was the training course for heavy vehicle operation. The field tests compared product treated road patches to untreated patches and patches with alternative dust suppressants.

The complete test results are available on the Midwest Industrial Supply website at [www.midwestind.com/problemsolver/productmaterials/ACF8F3.pdf](http://www.midwestind.com/problemsolver/productmaterials/ACF8F3.pdf) and [www.midwestind.com/problemsolver/productmaterials/ACF8FE.pdf](http://www.midwestind.com/problemsolver/productmaterials/ACF8FE.pdf).

CARB also certified two dust suppressant products recently, Soil-Sement® and PennzSuppress D®, through its Equipment Precertification Program. PennzSuppress D® was tested over a 28-day period on an unpaved public road in Tucson and Soil-Sement® was tested in Merced County, CA three times over a period of one year. More information can be found at the CARB website, <http://www.arb.ca.gov/eqpr/mainlist.htm>. ♦

### **Transferring Air Quality Permits**

"I am considering selling my business and would like to transfer the existing Air Quality Permit as part of the sale. Are Air Quality Permits transferable and what are the requirements to transfer a permit?"

The ability to transfer and procedure for completing transfers of Air Quality Permits are governed by ARS 49-429 and Maricopa County Air Quality Regulation II, Rule 200, Section 404. Permits are not transferable from one location to another except for mobile source permits. Permits are not transferable between different sources.

The most important aspect of permit transfer to keep in mind is that the request for permit transfer must be submitted at least 30 days before the transfer of ownership is to take place.

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## LOCAL NEWS

### **The Good, The Bad, and the Dusty**



With the help of many industry partners, the Maricopa County Small Business Assistance Program put on the First Annual Dust Symposium, nicknamed "The Good, The Bad and the Dusty," on April 25. The symposium was a gathering of industry representatives, government regulators, and environmental managers, and served as a forum to share ideas, information, and concerns.

The event was kicked off with a delightful continental breakfast and things got rolling quickly with opening remarks from representatives from the presidents of the Arizona Association of General Contractors and the Arizona Rock Products Association. Then the crowd was treated to a "go get 'em" speech and exciting video delivered by Michael Bidwell, Vice President and General Counsel to the Arizona Cardinals.

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### ***The Good, The Bad, and the Dusty (cont.)***

Throughout the day several informative panels were presented with expert speakers lending unique points of view to a variety of different topics. First, several government officials from Maricopa County and EPA Region IX discussed current compliance issues. Later, representatives from industry and the Arizona Department of Transportation provided practical tips to companies to reduce particulate emissions. Another panel focused on the problems contributing to the Brown Cloud, with discussions on soil types, weather, and wind patterns. The final panel of the day consisted of analyses by two attorneys of the current lawsuit challenging EPA's approval of the Arizona PM10 plan.

The afternoon wrapped up with a heart warming speech by Speaker of the Arizona House of Representatives, Franklin "Jake" Flake, addressing Arizona's environmental and economic concerns, and was followed by a delicious grilled chicken and steak lunch. The event was a huge success and plans are already in the works for a follow up symposium.

Thanks to all those who attended and those who helped sponsor the conference. If you are interested in contact information for the vendors displayed, please see the list below or visit the Maricopa County SBEAP website at: [www.maricopa.gov/sbeap](http://www.maricopa.gov/sbeap). ❖

### ***Current Rulemaking Actions***

The Environmental Services Department is currently working on several significant rulemaking packages. The activities include an emission bank rule package, a restructuring and increase to some of the air quality fees, and revisions to the fugitive dust rules to address EPA deficiencies. The Maricopa County Board of Supervisors approved the emission bank rule package on May 7, 2003, and a revision to the fee rule on May 21, 2003.

#### **Dust Symposium Vendors**

1. **Advantage Dust Control**  
480-545-8373  
[jfarrell9@cox.net](mailto:jfarrell9@cox.net)
2. **Akron Brass Company**  
800-228-1161  
[wkmfire@aol.com](mailto:wkmfire@aol.com)
3. **Arizona Water Reel**  
623-434-8502
4. **L.N. Curtis & Sons**  
800-426-0509  
[gnorton@lncurtis.com](mailto:gnorton@lncurtis.com)
5. **Desert Mountain Corporation**  
800-375-9264  
[www.desertmtncorp.com](http://www.desertmtncorp.com)
6. **Desert Spray**  
480-513-8986  
[DesertSpray@cox.net](mailto:DesertSpray@cox.net)
7. **Dust Pro, Inc.**  
602-251-3878
8. **Earthcare Consultants, LLC**  
888-792-4001  
[www.DustDr.com](http://www.DustDr.com)
9. **EnviRoad, LLC**  
800-536-2650  
[www.enviroad.com](http://www.enviroad.com)
10. **Environmental Dust Control**  
507-763-3481  
[www.dustlock.com](http://www.dustlock.com)
11. **Golden West**  
800-845-5060  
[www.g-west.com](http://www.g-west.com)
12. **LDP Associates, Inc.**  
602-494-7220  
[www.ldpassociates.com](http://www.ldpassociates.com)
13. **Markham Contracting**  
623-869-9100  
[www.markhamcontracting.com](http://www.markhamcontracting.com)
14. **Microcool**  
760.322.1111  
[www.microcool.com](http://www.microcool.com)
15. **National Environmental Service Co., Inc.**  
800-2DR-DUST  
[www.dr dust.com](http://www.dr dust.com)
16. **Revegetation Services**  
480-988-3011
17. **South Western Sealcoating**  
888-NO-DUST1  
[www.nodust1.com](http://www.nodust1.com)
18. **Trackout Control, LLC**  
480-940-7245  
[www.Trackoutcontrol.com](http://www.Trackoutcontrol.com)
19. **Vehicle Equipment & Washers, Inc.**  
866-778-7325  
[www.vewi.com](http://www.vewi.com)
20. **WaterMovers**  
602-275-8822  
[www.h2omovers.com](http://www.h2omovers.com)
21. **Windpatrol**  
734-677-2420  
[www.windpatrol.com](http://www.windpatrol.com)

Stakeholder meetings and subcommittee work groups are underway in order to propose a formal revision to the fugitive dust rule by late summer.

**Emissions Bank:** Rule 204 was created, and Rules 210, 220 and 240 were amended in order for the Arizona Department of Environmental Quality (ADEQ) to administer its emissions bank. Maricopa County Environmental Services Department (MCESD) will conduct two elements of the emissions bank program in Maricopa County. First, the county will certify emissions credits generated within Maricopa County when revising permits for sources that reduce emissions and seek certification for those reductions. Additionally, the MCESD will re-evaluate credits and certify their use when completing permit actions for sources locating or expanding in Maricopa County that are required to offset the new emissions.

**Fees:** The revisions to Rule 280 (Fees) were effective July 1, 2003. MCESD completed the first phase of the reanalysis of the air quality fees in 1998. Since 1998, MCESD has been working on the second phase of the project, reanalyzing and revising the remaining fee categories.

As a result of changes to the County's enabling statutes, MCESD coordinated with the Arizona Department of Environmental Quality (ADEQ), Pinal County, and Pima County to examine air quality fees on a statewide basis. Following ADEQ's fee revision in December 2001, MCESD held additional workshops, prepared a Notice of Proposed Rulemaking, and conducted an oral proceeding as required by A.R.S. §§49-471.04-06. The fees adopted in this action had not been revised since 1993. In response to concerns raised by industry, the Department has revised the structure of the fees. Some fees will remain the same or decrease slightly, but most fees will increase. Overall, fee revenue is estimated to increase by approximately \$500,000 per year as a result of these revisions.

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## **Current Rulemaking Actions (cont.)**

**Fugitive Dust:** Revisions to Rule 310 will improve clarity, fix typographical and formatting errors, and incorporate revised test methods. Additionally some standards may be changed; examples include: providing an affirmative defense for site operators with respect to untarped haul loads and requiring disclosure of soil types in earthmoving permit applications. Revisions to this rule also address enforceability concerns identified by the Environmental Protection Agency in its approval of the serious area PM10 plan. Rules 311,312,320,322 and 323 were adopted by the Board on July 2, 2003.

Copies of the revised rules are available on the Department's webpage at: [www.maricopa.gov/envsvc/AIR/ruledesc.asp](http://www.maricopa.gov/envsvc/AIR/ruledesc.asp) and copies of draft rule and the workshop schedule can be found at [www.maricopa.gov/envsvc/AIR/workshops.asp](http://www.maricopa.gov/envsvc/AIR/workshops.asp). ❖

## **WHAT'S HAPPENING AROUND THE NATION?**



### **Industry on the Performance Track**

The National Environmental Performance Track (Performance Track) program is based on the premise that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also provide opportunities for reducing costs and stimulating technological innovation. Performance Track encourages performance improvements by supporting environmental goals that go beyond compliance, proposing regulatory changes and providing opportunities for the sharing of information among members.

EPA personnel and state officials visit a portion of the member facilities each year. EPA provides an assessment of a facility's programs and may suggest opportunities for improvements or partnerships with other firms and sources of technical expertise.

### **Qualifications**

To qualify for Performance Track, a facility must meet the following four requirements:

- Establish and maintain a comprehensive environmental management system
- Demonstrate specific environmental achievements and commit to continuous environmental improvement
- Inform and seek input from its local community about the facility's environmental performance
- Maintain a record of sustained compliance with environmental requirements

### **Benefits**

EPA seeks to establish Performance Track as a "gold standard" for environmental performance. To encourage facilities to strive for this standard, EPA enhances membership desirability through the following incentives:

- Recognition and awareness (heightened environmental profile among regulators, peers, investors, customers, employees and local communities)
- Learning network (electronic newsletters, tele-seminars, regional events, EPA roundtables and annual member event)
- Regulatory and administrative incentives (low priority for routine inspections; reduced burden of regulations; and permitting, reporting and record keeping initiatives)

As an example, EPA has proposed to reduce the burden of compliance for all facilities subject to the Resource Conservation and Recovery Act. A final

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## **Transferring Air Quality Permits (cont.)**

The request for permit transfer is submitted by the current permit holder and must contain the following information:

- The permit number and expiration date.
- The name, address and telephone number of the current permit holder.
- The name, address and telephone number of the person to receive the permit.
- The name and title of the individual within the organization who is accepting responsibility for the permit along with a signed statement by that person indicating such acceptance.
- A description of the equipment to be transferred.
- A written agreement containing a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee.
- Provisions for the payment of any fees due pursuant to Rule 280.
- Sufficient information concerning the sources technical and financial capabilities of operating the source to allow the Control Officer to make a determination.

The request for permit transfer must comply with the administrative permit amendment procedures of Rule 210 (Title V permits) or Rule 220 (non-Title V permits). Based on the request the Control Officer will either grant or deny the transfer. The Control Officer's decision is subject to appeal pursuant to Rule 200, Section 404.3. ❖

## **Industry on the Performance Track (cont.)**

rule based on this proposal will be issued during the summer of 2003. Under this rule, Performance Track members may see additional reductions in burden beyond those available to other facilities.

This proposal advances the principle that high-performing facilities should be recognized for their accomplishments by allowing them to focus more on environmental progress instead of process.

### **Program Achievements**

The program commenced on June 26, 2000. Since its initiation, Performance Track has:

- Grown to include over 300 members
- Engaged 19 trade, professional and environmental organizations in the Performance Track Network
- Created a learning community of members, government, associations and prospective members
- Strengthened links among federal and state performance based excellence programs
- Developed proposals for regulatory and policy changes that allow for better environmental and business performance

### **Member Achievements**

Performance Track members have made great strides in improving their impact on the environment. Some of the achievements have resulted in reduced levels of air pollution, water pollution and solid waste generation.

Other achievements have been made in areas such as material use, water use, energy use and habitat preservation.

In their first year of participation, members have reduced:

- Hazardous materials use by 908 tons
- Emissions of volatile organic compounds by 329 tons

- Emissions of air toxics by 57 tons
- Emissions of nitrogen oxides by 152 tons
- Toxic discharges to water by 5,543 tons
- Solid waste by 150,000 tons
- Hazardous waste by 692 tons

Additional achievements include:

- Energy use reduced by 1.1 million MMBtus
- Water use reduced by 475 million gallons
- Reused and recycled materials use increased by 10,823 tons
- 2,698 acres of habitat preserved or restored

### **Membership Information**

Facilities are accepted into Performance Track for a three-year period, after which they can renew their membership. Applications are accepted twice each year: from February 1 to April 30 and from August 1 to October 31. The Performance Track application can be found at the following website: [www.epa.gov/performance-track/apps/app.htm](http://www.epa.gov/performance-track/apps/app.htm). ❖

## **BUSINESS AND ENVIRONMENTAL SOLUTIONS**

### **Free Air Compliance Advisor Software Available**

Are you a regulated VOC or PM<sub>10</sub> emitting facility? Have you had to change a process, add control equipment or make modifications in order to accommodate VOC or PM<sub>10</sub> regulations or permit requirements? If so, EPA is promoting a tool that will make your life easier.

The tool is a free computer software package called Air Compliance Advisor (ACA). This software assists on-site air pollution managers in developing strategies for addressing compliance issues. If a facility has to add control

equipment because their particulate matter emissions are higher than regulations allow, this software provides analysis of options that can bring the facility into compliance. It will calculate the lowest costing control equipment, tell you which one decreases emissions the most, or show you what will happen if the you want to modify the process. ACA applies the source's information, existing pollution regulations, emission reduction techniques, and permit requirements.

### **Resource Central**

#### **EMS Sources**

[www.peercenter.net](http://www.peercenter.net)  
[www.ccar-greenlink.org](http://www.ccar-greenlink.org)  
[www.toolbase.org](http://www.toolbase.org)  
[www.cleansolutions.org](http://www.cleansolutions.org)

#### **Surface Coating**

[www.paintcenter.org](http://www.paintcenter.org)

#### **Printed Wiring Board**

[www.pwbrc.org](http://www.pwbrc.org)

#### **Drycleaners**

[www.greenearthcleaning.com](http://www.greenearthcleaning.com)

Recently Maricopa County's Air Quality personnel learned how to use this software to analyze costs for installing equipment. Prior to the development of this software, the only EPA instrument available was the bulky, technical EPA Cost Control Manual. Using the ACA instead of the manual saves hours of calculating time.

The ACA will also be helpful if, and when, facilities use this software for providing documentation to the regulators on cost estimation when changes are required at their facility. This will make it easier for regulators to follow the facilities' costing methods and therefore facilitate a more cooperative working relationship.

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## ENVIRONMENTAL LAW

### ***New Source Review: An Uncertain Future***

The New Source Review (NSR) program promulgated pursuant to the Clean Air Act (CAA) has received a significant amount of attention lately. Recently the EPA issued final rules significantly altering the applicability and impact of the NSR program, and proposed rules designed to change and clarify EPA's interpretation of "Routine Maintenance Repair and Replacement" (RMRR). Several parties have legally challenged both the final and proposed rules.

Further, a congressional study recommending wholesale changes to the NSR program was released in April; and several high profile settlements of enforcement actions under the existing program were announced. Considering all of the conflicting viewpoints the only certainty is that discussion and debate concerning the proper scope and administration of the program will continue.



The NSR program requires new Major Sources, or Major Modifications to existing Major Sources, to undergo increased permitting scrutiny and install modern air pollution controls. On December 31, 2002 EPA published a final rule making substantial changes to the NSR program. Among the changes included in the rule are: (1) "Plant-wide Applicability Limits" (PALs) allowing companies to make changes to a unit

without triggering NSR if they stay within the facility-wide PAL; (2) the ability to undertake "Pollution Prevention and Control Projects" upon giving notice to the agency without waiting for a permit revision; and (3) a "Clean Unit Provision" giving facilities greater flexibility to operate if they install "state-of-the-art" pollution controls.

On December 31, 2002, EPA also published a proposed rule interpreting what qualifies as "Routine Maintenance, Repair, and Replacement" (RMRR). Facility changes that qualify as RMRR are not considered modifications and thus are not subject to NSR. According to the proposed rule some activities would be specifically exempt while others would be considered RMRR so long as the design parameters of the unit are not changed and the cost stays within a predetermined yearly allowance.

Several lawsuits have now been filed in the United States Court of Appeals for the D.C. Circuit challenging both the proposed and final changes to the NSR program. Among the parties suing the EPA are: a consortium of eastern states such as New York, Connecticut, Maine, New Jersey, Rhode Island, and Vermont; the State of California; and Earthjustice suing on behalf of itself and the American Lung Association, Communities for a Better Environment, Natural Resources Defense Council, and the Sierra Club.

The majority of the current conflicts stem from the program's application to new sources while in effect grandfathering existing Major Sources until they undergo a Major Modification. Regulated businesses and the EPA argue

## ENFORCEMENT WRAP-UP

NAME	REASON
Spur Industries - Higley Mill & Feedlot - Jim Boyle #4 SW corner Higley & Germann, Gilbert	Order of Abatement by Consent - Failed to control fugitive dust. Required to implement increased dust control measures
A S P C - Lewis & SW Regional Juvenile Correction Complex 26700 S. Highway 85, Buckeye 85326	Order of Abatement by Consent - Failed to comply with permit condition. Penalty paid \$2,420.00
CEMEX USA Laveen Plant 6002 S. 75th Ave., Laveen 85043	Order of Abatement by Consent - Failed to submit emissions reports. Penalty paid \$1,528.00
CEMEX USA - Sunward Materials Plant #61/ Mesa, 1901 N. Alma School Rd. 85201	Order of Abatement by Consent - Failed to submit emissions reports. Penalty paid \$1,528.00
CEMEX USA - Portable Plant 2600 E. Lehi Rd., Mesa 85213	Order of Abatement by Consent - Failed to submit emissions reports. Penalty paid \$1,528.00
Thunderbird Exploration, Inc. Central Ave & Roosevelt St. Phoenix 85004	Order of Abatement by Consent - Failed to comply with opacity standards. Penalty paid \$300.00 plus have employees trained in opacity monitoring.
Marlyn Nutraceuticals, Inc. 4404 E. Elwood, Phoenix, AZ 85040	Order of Abatement by Consent - Failed to submit emissions reports. Penalty paid \$2,500.00.
Maricopa Medical Center 2601 E. Roosevelt Rd. Phoenix, AZ 85008	Order of Abatement by Consent - Failed to comply with permit conditions. Penalty Paid \$860.00

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### ***New Source Review: An Uncertain Future (cont.)***

that under the current rules, the potential for facility changes to be considered Major Modifications subject to NSR review is a significant disincentive for existing sources not currently subject to NSR requirements who wish to modernize, thus preventing companies from making changes that would reduce pollution. Environmental groups and others argue that the purpose of the Major Modification provision is to ultimately require all Major Sources to comply with NSR, and that any changes that allow facilities to make significant changes without triggering NSR review substantially weaken the program and subvert the intent of the CAA.

In addition to the uncertainty caused by the rule changes and associated challenges, an independent study commissioned by Congress concluded that the NSR program performed poorly in controlling air pollution from the nation's oldest and dirtiest facilities. The report titled "*A Breath of Fresh Air: Reviving the New Source Review Program*" recommends ending grandfathering in favor of a compulsory


three tiered performance based system.

When dealing with the NSR program the stakes can be very high. Among the enforcement settlements announced by EPA in April were NSR cases against Archer Daniels Midland Company and the Virginia Electric Power Company. Archer Daniels settled for \$340 million and Virginia Electric agreed to spend \$1.2 billion to eliminate 237,000 tons of sulfur dioxide and nitrogen oxides. With this much at stake the debate and uncertainty is likely to continue. ❖

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### ***Free Air Compliance Advisor Software Available (cont.)***

Dan Maloney of D&E Technical, one of the creators of the ACA, conducted the training for MCESD and other local agencies, and will be back in the Valley this summer to provide training to facilities in conjunction with Maricopa County's Small Business Environmental Assistance Program (SBEAP). For future information regarding this terrific training opportunity, keep your eyes on the SBEAP webpage: [www.maricopa.gov/sbeap](http://www.maricopa.gov/sbeap). ❖



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